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Via Electronic Mail Delivery

Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

Re: ***Ex Parte Presentation***
Wireless LNP Forbearance – WT Docket No. 01-184

Dear M. Salas:

This letter serves as notification that on this date I met with Paul Margie (Legal Advisor to Commissioner Copps) to discuss the above-captioned proceeding. A copy of the presentation material discussed is attached hereto.

Pursuant to Section 1.1206(a), an original and one copy of this letter are being filed with your office. Please associate this letter with the file in the above-captioned proceeding.

Please contact us should you have questions concerning the foregoing.

Sincerely,

Luisa L. Lancetti

cc: Paul Margie

October, 2001

Wireless LNP Forbearance

Background

Congress decided in Feb. 1996 that LECs, but not CMRS providers, should implement LNP. Six months later, the FCC cited "independent authority" to act "as we deem appropriate" (remarkably citing Section 332, a deregulatory statute, for its legal basis). The FCC did not conduct cost-benefit analysis even though prior orders, including orders issued the same day, said that such an analysis was necessary before new regulations should be imposed on the competitive CMRS industry.

Section 11 of the Act specifies that FCC "shall review all regulations" every two years. FCC has conducted two biennial reviews, but has never reviewed wireless LNP mandate — even though then Commissioner Powell stated two years ago that "I cannot imagine any other industry segment that can better laud their state of economic competition as 'meaningful.'"

In Feb. 1999, FCC decided that Section 10 forbearance standard had been met, but that it should extend the LNP deadline rather than abrogate the mandate because of its belief that LNP was necessary for number pooling. This factual assumption is erroneous. LNP and pooling both require the MIN/MDN separation, but LNP requires substantial additional work and cost.

Section 10 Requires the FCC to Forbear from Applying the LNP Regulatory Mandate

Section 10 requires FCC to forbear from applying "any regulation" if three criteria are met. All three are satisfied here:

1. <u>LNP Is Not Necessary to Ensure Just and Reasonable Rates</u>. Bureau of Labor Statistics has monitored CMRS prices since December 1977. In past four years, the CMRS CPI has fallen nearly 32% — from 100 in Dec. 1977 to 68.1 in Aug. 2001. LNP will raise service prices since LNP support no new revenue generating services, so costs must therefore be recovered from existing services.

2. <u>LNP Is Not Necessary to Protect Consumers</u>. Twenty million mobile customers, one in five, switched carriers in 2000 without LNP. Another 20+ million customers will switch carriers this year. LNP is obviously not a barrier to consumer choice.

3. <u>LNP Forbearance Is Consistent with the Public Interest</u>. Resellers claim that LNP will intensify competition in CMRS market "through the enhancement of service quality, affordability, and variety." These claims are baseless:

   - LNP will result in deteriorated service quality, because capital that could be used for capacity cell sites will instead be diverted to LNP mandate;

   - LNP will not result in new "variety" to consumers, because all CMRS carriers must divert capital from investments that would provide innovations to the same regulatory mandate; and

   - LNP will increase prices rather than decrease prices. Because LNP does not result in any new revenue-generating services, sizable implementation and operational costs must instead be recovered from existing services. Because all carriers are facing the same sizable LNP costs, there will be little competitive pressure to reduce rates. It is noteworthy that LEC prices have increased with LNP while CMRS prices have continued to fall without LNP.

   Notably, although resellers even oppose an extension in the LNP deadline, they have not certified that they will be LNP-capable by 11-24-01 (*e.g.,* install operational ICC modules).

   States instead argue that LNP is necessary to promote LEC/CMRS competition. There were 128 million residential LEC customers at end of 1999 (most recent data available), while CTIA estimates that there are today over 122 million CMRS customers. Given CMRS growth rates, number of CMRS customers will soon exceed the number of residential LEC customers. The fact is that most consumers today have both fixed and mobile service. Consumers will "unplug" LEC service when they are comfortable with CMRS coverage and service quality. Landline substitution is occurring and this competitive development does not require wireless LNP. By contrast, one way to inhibit LEC/CMRS competition is to force carriers to divert finite capital from coverage/service quality investments while simultaneously increasing the price of mobile service — thereby increasing the price disparity between LEC and CMRS services.

LNP Inhibits Timely and Successful Implementation of Number Pooling and has Network Reliability Implications

It is axiomatic that the chance of successfully implementing a task improves considerably if one need only do one massive task rather than two massive tasks simultaneously — even ignoring other mandates such as E911, CALEA and TTY. Network reliability issues are of concern here.

Existing Roaming Capabilities May be Impaired

There are approximately 250 CMRS carriers. The State Coordinating Group acknowledges that "many smaller wireless carriers are confused about what they need to do and have not yet made the necessary arrangements to become LNP-capable." Yet, the same Group has recognized that to "the extent that some carriers do not meet the LNP deadline, some customers will be dropped from the network when roaming outside their home area — a result that benefits neither the consumer nor the carriers."

LNP is Enormously Costly to Implement and Operate

During 2001-2004, SPCS expects to spend $218 million on pooling and porting. This sum would fall to $77 million — by over $141 million or 65% — if the LNP mandate was removed. SPCS serves approximately 10% of all CMRS customers. Assuming other carriers are incurring similar costs (a reasonable assumption given they are undertaking the same work), the total consumer benefit by eliminating LNP would exceed $1.4 billion over this four year period. Put another way, if LNP mandate is maintained, industry must increase rates for existing services to recover the regulatory cost. In addition, there are significant, ongoing operational costs associated with LNP alone. The cost and effort are not justifiable, and will not serve the public interest.